

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

MARIO SANCHEZ AGUIRRE,

Plaintiff,

v.

BRALEY E. TAYLOR and EPES
TRANSPORT,

Defendants.

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CIVIL NO.

NOTICE OF REMOVAL

Defendants Braley E. Taylor and Epes Transport file this notice of removal under 28 U.S.C. § 1446(a).

I. STATE COURT ACTION

1. On September 4, 2015, Plaintiff Mario Sanchez Aguirre filed his original petition in the 49th District Court of Webb County, Texas. This is a negligence action deriving from a commercial vehicle accident. The state cause number is 2015-CVF-002964-D1.

II. REMOVAL IS TIMELY

2. Defendant Epes Transport was served with the citation on September 21, 2015. Defendant Taylor was served with the citation on September 23, 2015. Defendants file this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b).

III. FEDERAL JURISDICTION

3.1 Removal is proper because there is complete diversity between the parties. 28 U.S.C. § 1332(a). Plaintiff is a citizen of Texas. Defendant Taylor is a citizen of Virginia, and Epes Transport is a North Carolina corporation with its principal place of business in North Carolina.

3.2 The amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. § 1332(a). The petition does not state a specific amount for damages. Instead, it alleges that plaintiff suffered severe physical injury to his body, loss of physical capacity, physical impairment, and disfigurement, and that he seeks recovery for pain and suffering, mental anguish, and medical expenses. (Original Petition p. 4.) See *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999) (holding that even though complaint did not state specific amount, it was evident that damages were over jurisdictional amount when complaint sought recovery for property damage, travel expenses, medical bills, pain and suffering, and humiliation). Other evidence, including a settlement demand, provides further support that the amount in controversy exceeds the jurisdictional amount.

IV. CONSENT TO REMOVAL

4. All defendants who have been properly joined and served consent to the removal of this case to federal court. 28 U.S.C. § 1446(b)(2)(A).

V. VENUE IS PROPER

5. Venue is proper in this district and division under 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this district and division.

VI. JURY DEMAND

6. Plaintiff demanded a trial by jury in the state-court action.

VII. STATE COURT DOCUMENTS

7.1 Copies of all pleadings, process, orders, and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. § 1446(a) and local rule 81.

7.2 The index of State Court documents are as follows:

- A. Certified copy of the docket sheet from the 49th District Court of Webb County, Texas;
- B. Plaintiff's Original Petition;
- C. Citation by Certified Mail;
(Issued as to Epes Transport System, Inc.)
- D. Citation by Certified Mail;
(Issued as to Braley E. Taylor)
- E. Defendant Epes' Original Answer and Affirmative Defenses;
(Filed in state court before removal)
- F. List of Counsel of Record; and
- G. Notice of Filing of Removal.

7.3 Defendants will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

VIII. CONCLUSION

8. For these reasons, defendants respectfully request the Court to remove the suit to the Laredo Division of the United States District Court for the Southern District of Texas.

Respectfully submitted,

/s/ Christopher C. Peterson

CHRISTOPHER C. PETERSON

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Attorney In Charge For Defendants

Epes Transport System, Inc. and Braley E.

Taylor

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing document has been forwarded via certified mail, return receipt requested, via facsimile, and /or hand delivered on this 19th day of October, 2015 to the following:

Via Facsimile No. 956.467.1742

John Saenz

John Saenz & Associates, PC

805 Dallas Avenue

McAllen, Texas 78501

/s/ Christopher C. Peterson

CHRISTOPHER C. PETERSON